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Inc., and Eat at Joe's, Ltd. n/k/a SPYR, Inc.*

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

**SECURITIES AND EXCHANGE  
COMMISSION,**

Plaintiff,

v.

**JOSEPH A. FIORE, BERKSHIRE  
CAPITAL MANAGEMENT COMPANY,  
INC., and EAT AT JOE'S, LTD. n/k/a  
SPYR, INC.,**

Defendants.

Civil Action No. 7:18-cv-05474

**DECLARATION OF ALEX  
SPIRO IN SUPPORT OF  
DEFENDANTS' MOTION TO  
DISMISS**

**DECLARATION OF ALEXANDER SPIRO**

I, Alexander Spiro, declare as follows:

1. I am a member of the bar of the State of New York and a partner of Quinn Emanuel Urquhart & Sullivan, LLP, attorneys for Defendants Joseph A Fiore (“Fiore”), Berkshire Capital Management Company, Inc. (“Berkshire”), and Eat at Joe's, Ltd. n/k/a SPYR, Inc. (“EAJ”). I make this declaration in support of Defendants’ Motion to Dismiss the SEC’s Complaint, filed concurrently herewith.
2. Attached as **Exhibit A** is a true and correct copy of Fiore and Berkshire *Wells* Submission, dated May 19, 2017 and made in response to the SEC’s *Wells* Notices.
3. Attached as **Exhibit B** is a true and correct copy of EAJ *Wells* Submission, dated May 19, 2017 and made in response to the SEC’s *Wells* Notices.
4. Attached as **Exhibit C** is a true and correct copy of the Securities and Exchange Commission Website and its definition of “penny stock,” located at <https://www.sec.gov/fast-answers/answerspennyhtm.html>.
5. Attached as **Exhibit D** is a true and correct copy of EAJ’s 2013 form 10-K filing.
6. Attached as **Exhibit E** is a true and correct copy of EAJ’s 2014 form 10-K filing.
7. Attached as **Exhibit F** is a true and correct copy of Plandai Biotechnology, Inc.’s 2011 form 10-K filing.
8. Attached as **Exhibit G** is a true and correct copy of Plandai Biotechnology, Inc.’s 2012 form 10-K filing.
9. Attached as **Exhibit H** is a true and correct copy of Plandai Biotechnology, Inc.’s 2013 form 10-K filing.
10. Attached as **Exhibit I** is a true and correct copy of Plandai Biotechnology, Inc.’s 2014 form 10-K filing.
11. Attached as **Exhibit J** is a true and correct copy of Deputy Attorney General James M. Cole Memorandum entitled, “Guidance Regarding Marijuana Enforcement.”

12. Attached as **Exhibit K** is a true and correct copy of a *Huffington Post* article entitled, “Colorado Recreational Pot Sales: Medical Marijuana Shops Get Head Start,” located at [https://www.huffingtonpost.com/2013/04/25/colorado-medical-marijuana-recreational-pot-sales\\_n\\_3157647.html](https://www.huffingtonpost.com/2013/04/25/colorado-medical-marijuana-recreational-pot-sales_n_3157647.html) (last visited November 1, 2018).

13. Attached as **Exhibit L** is a true and correct copy of a *New York Times* article entitled, “How to Legalize Pot,” located at <https://www.nytimes.com/2013/05/20/opinion/keller-how-to-legalize-pot.html> (last visited November 1, 2018).

14. Attached as **Exhibit M** is a true and correct copy of an article by *The New Yorker* entitled, “Going the Distance; On and Off the Road with Barack Obama,” located at <https://www.newyorker.com/magazine/2014/01/27/going-the-distance-david-remnick> (last visited November 1, 2018).

15. Attached as **Exhibit N** is a true and correct copy of a CNN article by Sanjay Gupta entitled, “Why I changed my mind on Weed,” located at <https://www.cnn.com/2013/08/08/health/gupta-changed-mind-marijuana/index.html> (last visited November 1, 2018).

16. Attached as **Exhibit O** is a true and correct copy of Plaintiff’s Complaint, filed pursuant to Judge Karas’ Individual Rules of Practice.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 2nd day of November, 2018, at New York, New York.

By: /s/Alexander Spiro  
Alexander Spiro  
alexspiro@quinnemanuel.com

**CERTIFICATE OF SERVICE**

A copy of the foregoing declaration was served on all counsel of record for the parties via ECF on November 2, 2018

/s/ Alexander Spiro  
Alexander Spiro